December 14, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

The undersigned associations and companies – the American Cable Association, the Competitive Carriers Association, the National Cable & Telecommunications Association, the Wireless Internet Service Providers Association, DISH Network, L.L.C., EchoStar Technologies, L.L.C., and ViaSat, Inc. – represent broadband providers of every size, serving every geographic area of the country, and using virtually every type of broadband technology. We submit this letter to highlight the significant concerns we have with the Commission's proposals for continuing Phase I of the Connect America Fund ("CAF") for price cap carriers, as well as with the direction of the overall CAF program implementation. As explained below, the proposals in the recent *FNPRM* [1] represent a giant step backwards in the Commission's efforts to modernize the universal service high-cost program and should not be adopted as proposed. Instead, the Commission should issue a supplemental notice seeking comment on proposals that would provide all service providers, both incumbent and competing providers, an opportunity to receive support. More broadly, the Commission should ensure that its upcoming decisions addressing issues pertaining to CAF distributions put the support programs on a more competitively and technologically neutral path and ensure that support is distributed efficiently.

In the National Broadband Plan, the Commission articulated a new vision for a modern universal service high-cost support regime that would be appropriate and effective in today's competitive, broadband era. Rather than subsidizing only phone service, the program would now require recipients to deploy broadband-capable networks.[2] Rather than direct funding primarily to incumbent local exchange carriers ("LECs"), the program would direct support to the most

---

[1] *Connect America Fund*, WC Docket No. 10-90 *et al.*, Further Notice of Proposed Rulemaking, FCC 12-138 (rel. Nov. 19, 2012) (*FNPRM*).

[2] CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, GN Docket No. 09-51, at 143, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010) (National Broadband Plan). (2010) ("The federal government should, over time, end all financial support for networks that only provide 'Plain Old Telephone Service' (POTS) and should provide financial support, where necessary and in an economically efficient manner, for broadband platforms that enable many applications, including voice.").

efficient provider on a competitively and technologically neutral basis.[3] Market-based and forward-looking distribution mechanisms would be introduced and accountability would be increased to ensure that recipients would receive no more support than needed and that they use that support to achieve the Commission's goals.[4] In addition, the Commission would engage with tribal areas on a government-to-government basis to identify the best ways to bring broadband to those areas.[5] As transformed, the modernized Universal Service Fund would facilitate and accelerate broadband deployment to the millions of Americans (including many in remote and tribal areas) that are unable to receive terrestrial broadband services.

In the 2011 *CAF Order*, the Commission began to implement this new vision of universal service support, although it also departed from that vision in a number of significant ways.[6] Abandoning the well-established principle of competitive neutrality, the Commission set aside $300 million per year for the exclusive use of price cap LECs in Phase I of the CAF, which was intended to be a one-time, incremental support program to be used while the Commission considered more extensive cost models for Phase II.[7] The Commission also gave those same price cap LECs a right of first refusal to receive five years of support, with an annual budget of $1.8 billion, in Phase II of the CAF if they commit to reach high-cost locations that lack a competitive terrestrial provider within select areas, and in defining those locations, it disregarded the existence of certain competitive broadband technologies.[8] In stark contrast to the Commission's stated efforts to preserve or increase the amount of support flowing to large incumbent LECs, the Commission ordered hundreds of millions of dollars of net reductions in annual support for competitive carriers.[9] The Commission sought to justify these departures from competitive and technological neutrality as limited, short-term measures designed to ease the transition for incumbent LECs.[10]

---

3 *Id.* at 145 ("Support should be available to both incumbent and competitive telephone companies (whether classified today as 'rural' or 'non-rural'), fixed and mobile wireless providers, satellite providers and other broadband providers, consistent with statutory requirements. Any broadband provider that can meet or exceed the specifications set by the FCC should be eligible to receive support.").

4 *Id.* ("The FCC should identify ways to drive funding to efficient levels, including market-based mechanisms where appropriate, to determine the firms that will receive CAF support and the amount of support they will receive. If enough carriers compete for support in a given area and the mechanism is properly designed, the market should help identify the provider that will serve the area at the lowest cost."); ("Recipients of CAF support must be accountable for its use and subject to enforceable timelines for achieving universal access.").

5 *Id.* at 146.

6 *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*CAF Order*).

7 *Id.* at 17712-13, ¶ 128; 47 C.F.R. § 54.312(b).

8 *Id.* at 17725-32, 17701-02, ¶¶ 158-78, 103-04.

9 *Id.* at 17830-37, ¶¶ 512-32.

10 *Id*. at 17709, 17732, ¶¶ 120, 178.

As many companies and associations documented before the *FNPRM* was released,[11] the CAF Phase I experiment in giving support solely to price cap LECs should not be repeated. The majority of the $300 million for 2012 was not accepted by price cap LECs and many of them submitted waiver requests suggesting that they would take on a larger obligation only if they received substantially more money to deploy broadband service to unserved locations – as much as 10 times the amount designated by the Commission.[12] In dramatic contrast to this experience, the initial Mobility Fund auction successfully distributed $300 million to a group of 33 companies, which committed to build facilities covering more than 83,000 road miles in unserved areas.[13] Unlike the price cap CAF Phase I mechanism, the Mobility Fund made support available to any eligible mobile wireless provider and distributed that support using a competitive bidding model. As a result, the Commission can have confidence that it achieved maximum deployment at the lowest price, something that cannot be said with respect to CAF Phase I.

The *FNPRM* completely ignores the principles of competitive and technological neutrality emphasized in the National Broadband Plan. The *FNPRM* seeks comment on only two alternatives for distributing the unclaimed $185 million from CAF Phase I in 2012 and the new $300 million in CAF Phase I money for 2013 – either giving that money exclusively to the same incumbent LECs under a modified version of the original CAF Phase I rules or distributing that money as part of CAF Phase II, where the price cap LECs have been granted a right of first refusal to all the money.[14] The *FNPRM* is completely devoid of any discussion of alternatives that the undersigned have presented to the Commission in various pleadings and *ex parte* letters, and presents only options that favor incumbent LECs. By ignoring numerous filings identifying options for distributing high-cost support to companies other than incumbent LECs and other

---

[11] *See, e.g.,* Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Federal Communications Commission , WC Docket Nos. 10-90 *et al.* (Sept. 19, 2012); Letter from Jeffrey H. Blum, DISH Network, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90 *et al*. (filed Sept. 27, 2011);Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene Dortch, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337 (Oct. 19, 2012); Letter from David A. Lafuria, Counsel for United States Cellular Corporation, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90 *et al.* (Oct. 26, 2012); Letter from Stephen K. Berry and Rebecca Murphy Thompson, Competitive Carriers Association, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90 *et al.* (Oct. 31, 2012); Letter from Jennifer K. McKee and Steven F. Morris, NCTA, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337 (Nov. 13, 2012); Letter from Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90 *et al.* (Nov. 16, 2012).

[12] Windstream Election and Petition for Waiver, WC Docket No. 10-90 *et al*, at 6. (filed July 24, 2012) (seeking approximately $3700 per additional location served); Fairpoint Communications, Inc. Petition for Waiver, WC Docket No. 10-90 *et al.*, at 11-12 (filed Sept. 10, 2012) (seeking more than $4000 per additional location served); ACS of Anchorage et al. Petition for Waiver, WC Docket Nos. 10-90 and 05-337, at 8 (Sept. 29, 2012) (seeking $5000 to $7800 per additional location served).

[13] *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, Public Notice, 27 FCC Rcd 12031, 12032, ¶ 1 (Wireless Telecom. Bur., 2012).

[14] *FNPRM*, FCC 12-138 at ¶ 3.

proposals that would more efficiently distribute funds, the Commission is taking a giant step backwards that inevitably will lead to inefficient and wasteful spending and fewer locations receiving broadband service.

Moreover, the Commission seeks comment on proposals to increase the amount of funding available per location without the benefit of a cost model or other means of determining whether the amount disbursed equates to the cost of the buildout.[15] Such a system would give rise to the same concerns that led the Commission to phase out key elements of the old high-cost support regime, such as Interstate Access Support and the identical support rule.

The *FNPRM* also continues to ignore the needs of remote and tribal areas. The Commission stated that it would establish a Tribal Mobility Fund to award up to $50 million to support deployment in tribal areas.[16] It also stated that it would complete work by the end of 2012 on a Remote Areas Fund (RAF), which would provide at least $100 million to support deployment in areas too costly to serve with wireline technology.[17] In the year since the *CAF Order* was adopted, the Commission has yet to achieve either of these objectives. These are areas where deployment is least likely to occur without a strong government support program that includes a variety of non-LEC recipients, but the Commission appears to have devoted none of its attention, and none of the available Universal Service Fund money, to improving the situation in these locations. The Commission's failure to implement the Tribal Mobility Fund and the RAF stands in stark contrast to its rush to throw money at the price cap LECs, especially given price cap carriers' dismal track record in accepting initial CAF Phase I money and using it to achieve the Commission's goals of deploying broadband quickly and efficiently.

In sum, notwithstanding the significant reforms adopted last year, the *FNPRM* creates a strong impression that real reform remains illusory and that it is business as usual for the high-cost support program. Price cap LECs have not lost a single penny in their old support and the Commission appears eager to give them half a billion dollars more, without giving any consideration to whether there are more efficient or effective alternatives. Before the "new" universal service regime goes completely off track, we strongly encourage the Commission to issue a supplemental notice seeking comment on proposals that would more equitably distribute CAF Phase I funding, including proposals that the undersigned entities submitted on the record in advance of the *FNPRM*.[18] In addition, as the Commission considers CAF Phase II and Mobility Fund issues relating to cost modeling, competitive bidding rules, and other key cornerstones, it should ensure that consumer welfare remains the focus, rather than provider welfare. The Commission can do so by maximizing the amount of support available on a

---

[15] *Id.* at ¶¶ 18-20 (seeking comment on a proposal to provide CAF Phase I support to price cap LECs based on miles of fiber deployed and number of unserved locations per mile (e.g., Windstream's waiver request to receive $35,784 per mile of fiber, which would serve 10 locations per mile, or approximately $3600 per location)).

[16] *CAF Order*, 26 FCC Rcd at 17819-24, ¶¶ 481-92.

[17] *Id.* at 17675, ¶ 30.

[18] *See* note 11 *supra*.

competitively neutral basis to *all* service providers, while avoiding mechanisms that channel funding to price cap LECs without sufficient regard for cost and efficiency considerations.

Respectfully submitted,

/s/ **Ross J. Lieberman**

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007

/s/ **Rebecca Thompson**

Rebecca Thompson
General Counsel
Competitive Carriers Association
805 15th Street NW, Suite 401
Washington, DC 20005

/s/ **Steven F. Morris**

Steven F. Morris
Vice President & Assoc. General Counsel
National Cable & Telecommunications Association
25 Massachusetts Avenue, NW, Suite 100
Washington, DC 20001

/s/ **Matt Larsen**

Matt Larsen
FCC Committee Chair
Wireless Internet Service Providers Association
P O Box 1582
Mount Vernon, IL 62864

/s/ **Jeffrey H. Blum**

Jeffrey H. Blum
Senior Vice-President &
Deputy General Counsel
DISH Network L.L.C.
1110 Vermont Avenue NW, Suite 750
Washington, DC 20005

/s/ **Dean A. Manson**

Dean A. Manson
Executive Vice President, General Counsel & Secretary
EchoStar Corporation
100 Inverness Terrace East
Englewood, CO 80112

/s/ **Michael Rapelyea**

Michael Rapelyea
Director, Government Affairs
ViaSat, Inc.
6155 El Camino Real
Carlsbad, CA 92009

cc: M. Steffen
C. Kurth
A. Kronenberg
C. Mattey
P. Argeris
N. Degani
J. Veach